Case Western Reserve Law Review

Volume 13 | Issue 3

1962

Attorneys at Law

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which the writ should be used and that it should not be used unless there is no other regular or adequate remedy. Here the writ was sought to prevent the Administrator of the Bureau of Workmen's Compensation and the Industrial Commission from proceeding with a license suspension proceeding against a "lay representative." In denying the writ the court pointed out that the relator had an adequate remedy by a judicial appeal from the ultimate administrative decision in the suspension proceedings.

MAURICE S. CULP

AGENCY

Because of the lack of significant opinions rendered on Agency during the period covered by this survey Mr. Norman S. Jeavons has not submitted an article this year.

THE EDITORS

ATTORNEYS AT LAW

The adoption of chapter 1785 of the Ohio Revised Code was the most significant development in the law relating to attorneys during 1961. The eight sections of this chapter purport to allow attorneys, among others, to organize a corporation, the purpose of which is to practice law. The details of this act, its interpretation by the Ohio Supreme Court, and the relation of the act to the federal tax laws were treated in the March issue of the *Western Reserve Law Review*.[1] In view of this treatment of the Ohio Professional Associations Act any further comment in this article would be superfluous.

DISCIPLINARY ACTIONS

Disciplinary actions are generally newsworthy but rarely do they result in the enunciation of new legal principals. This year was no exception, but there were an unusual number of cases decided, and a definite attitude on the part of the Ohio Supreme Court can be discerned from the opinions in these cases. In *Cincinnati Bar Association v. Massengale*[2] the Ohio Supreme Court adopted the recommendation of the Board of Commissioners on Grievances and Discipline and indefinitely suspended

1. Vesely, *The Ohio Professional Associations Act*, 13 WEST. RES. L. REV. 195 (1962).
2. 171 Ohio St. 442, 171 N.E.2d 713 (1961).

respondent as a practicing attorney. Mr. Massengale had been convicted of wiretapping in violation of federal law. The court held that wiretapping is conduct which reflects upon an attorney's moral fitness to practice law. The court said:

> To preserve its prestige and standing, the legal profession should not and must not tolerate conduct on the part of its members which brings the profession as a whole into disrepute and invites public condemnation.[3]

A few months later the court rendered its decision in the widely publicized case of *Cleveland Bar Association v. Pleasant.*[4] Mr. Pleasant was indefinitely suspended in 1958 for perpetrating a fraud on the Probate Court of Cuyhoga County by entering into an undisclosed fee arrangement with the sole heir of the estate for which he was acting as administrator. Last year he sought reinstatement on the ground that he had been rehabilitated. A hearing was held and Mr. Pleasant brought in numerous judges and lawyers and statements from judges and lawyers to support his application. Mr. Pleasant and his supporters convinced the Board of Commissioners and they recommended reinstatement. The supreme court, upon examining the record was not impressed, particularly when it found that many of Pleasant's supporters knew him only slightly and were unaware that he had been disbarred and reinstated previous to his 1958 suspension. The following words of the opinion gives us an idea of the court's thinking in this area:

> Because of his derelictions, the legal profession and the public it serves should not be asked to repose further confidence in and reliance on this individual as an attorney at law. Professionally, he has been "weighed in the balance and found wanting."[5]

The court did not deviate from the strict policy vis-à-vis errant lawyers in the other three disciplinary cases which it considered in 1961.[6] The facts of these cases do not warrant comment. However, it should be noted that in all three cases the court held against the attorney and in the case of *In re Edwards*[7] reversed the Commission. Further, in *Cleveland Bar Association v. Fleck,*[8] the court increased the severity of the Commission's recommended punishment.

It is dangerous to attempt to draw broad conclusions from a series of

3. *Id.* at 445, 171 N.E.2d at 715.

4. 171 Ohio St. 546, 172 N.E.2d 911 (1961).

5. *Id.* at 549, 172 N.E.2d at 912.

6. Butler County Bar Assoc. v. Schaeffer, 172 Ohio St. 165, 174 N.E.2d 103 (1961); Cleveland Bar Assoc. v. Fleck, 172 Ohio St. 467, 178 N.E.2d 782 (1961); *In re* Edwards, 172 Ohio St. 351, 176 N.E.2d 404 (1961).

7. 172 Ohio St. 351, 176 N.E.2d 409 (1961). Here, the supreme court disapproved the report of the Board of Commissioners on Grievances and Discipline and disallowed petitioner's request to take the bar examination.

8. 172 Ohio St. 467, 178 N.E.2d 782 (1961). The Commission's recommendation of public reprimand was increased to indefinite suspension by the supreme court.

cases, each of which arose out of unique fact situations. However, the fact that every respondent in a disciplinary action lost, indicates a firm, if not severe attitude, toward unethical lawyers on the part of the court. Perhaps this tough attitude toward errant attorneys is not new but rather has been dormant in recent years. In any event the court is now vigorously asserting its role as the watchdog of the legal profession. As a result, both the general public and the legal profession will benefit.

UNAUTHORIZED PRACTICE

Some interesting issues were raised but not ruled upon last year when the Ohio Supreme Court delivered its opinion in the case of *State ex rel. McCurdy v. Carney.*[9] An action in mandamus was filed by the so called "public defender" of Cuyahoga County to force the County Auditor to pay him a fee for defending a person accused of a crime.[10] The court granted the writ, and noted that the allegations of unauthorized practice of law by a corporation, illegality of various acts by the Legal Aid Society and the Welfare Federation, and the impropriety of relator's acts were collateral to the issue before the court. Thus these very interesting legal points were left undecided.

Two Cleveland attorneys then brought suits against the Legal Aid Society in the Common Pleas Court of Cuyahoga County.[11] The cases squarely raised the issues which the Ohio Supreme Court refused to consider in the *McCurdy* case. In a written but unpublished opinion Judge Carlos Rieker held for the defendants, Legal Aid Society and others, on all counts. The judge found as fact that the Society is not operated as a commercial enterprise and that it does not stand as an intermediary between the lawyer and his client. The court pointed out that Canon 35 of the Canons of Professional Ethics,[12] specifically states that "charitable societies rendering aid to the indigent are not deemed such intermediaries."

The court went on to quote and then rely on the following language from the case of *Opinion of Justices:* "The gratuitous furnishing of legal aid to the poor and unfortunate without means in the pursuit of any civil remedy, as a matter of charity . . . does not constitute the practice of law."[13] The question of whether the fee for defending indigent criminals

9. 172 Ohio St. 175, 174 N.E.2d 253 (1961).

10. See OHIO REV. CODE §§ 2941.50-.51. These sections provide that the court may appoint counsel for an accused who is unable to employ an attorney and to compensate such attorney from county funds.

11. Frank Azzarello v. Legal Aid Society of Cleveland & Ronald H. Benjamin v. The Legal Aid Society of Cleveland, Case No. 741661, Cuyahoga County C.P. Ct., Dec. 19, 1961.

12. Cannon 35 has been adopted as rule XXVIII of the Rules of Practice of the Ohio Supreme Court.

13. 289 Mass. 607, 615, 194 N.E. 313, 317-18 (1935).